

Department of Public Health  
and Human Services

Section:  
NONFINANCIAL REQUIREMENTS

FAMILY MEDICAID

**DRAFT**

Subject:  
Minor Child Living with a Specified  
Caretaker Relative

**Supersedes:** FMA 305-1, 11/01/01

► **References:** ARM 37.82.101, 42 CFR 435.510

► **GENERAL RULE**--For certain Medicaid coverage groups, the minor child must be living with a specified caretaker relative who is providing care on a day-to-day basis in a setting maintained (or in the process of being established) as the child's home. Adults must either have a dependent child related within the fifth degree of kinship living with them, be pregnant or be aged, blind or disabled to qualify for Medicaid.

► **SPECIFIED  
RELATIVE**

A child's specified caretaker relative(s) may be any relation by blood, marriage or adoption who is within the fifth degree of kinship to the child. The individual must be an adult, 19 years old or older (or emancipated minor) to be considered a specified caretaker relative. A specified caretaker relative may be one of the following individuals:

1. Father, mother, grandfather, grandmother, brother, sister, uncle, aunt, first cousin, nephew, niece; or
2. Great grandparent, great-great grandparent, great-great-great grandparent, great aunt, uncle, great-great aunt and uncle; or
3. Stepfather, stepmother, stepbrother, stepsister; or
4. One who legally adopts the child or child's parent as well as the natural and other legally adopted children of such person, and other relatives of the adoptive parents; or
5. Spouses of anyone named in the above groups even after the marriage is terminated by death or divorce; and
6. First cousin once removed.

**EXAMPLE:** Fred's aunt is Pat, Pat's child is John, John's child is Joe. Joe is Fred's first cousin once removed.

Adoptions will take precedence over original blood relationship when both the natural and adoptive parents are in the home.

**EXAMPLE:** Household consists of Jenny, her adoptive parents (Michael and Nancy - natural grandparents), her biological mother

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(Angel) and Angel's son, Robert. Filing unit for MA-FM would be Michael, Nancy and Jenny. Angel is now considered to be Jenny's sister and Robert is Jenny's nephew.

If Michael and Nancy were not related to Jenny prior to the adoption (e.g., non-relative adoption), Jenny would have no relationship to Angel or Robert.

A specified caretaker related to the child either as the child's parent or by marriage to the child's parent (stepparent), must be included in the filing unit and may have his/her needs included in benefits as long as the child remains eligible (meets the age criteria, etc.) and the program provides benefits to the caretaker relative.

**EXCEPTION:** If the case is medically needy, the stepparent is included in the filing unit coded 'DP', and stepparent income is deemed. Stepparents are not included in a medically needy assistance unit.

A specified caretaker relative other than the child's parent (aunt, uncle, grandparents, etc.), must be acknowledged as the child's specified caretaker relative in the filing unit and may have his/her needs included in the assistance unit upon request. If the specified caretaker relative wants to be included in the assistance unit, his/her spouse is included in the filing unit as a Deemed Person (coded, 'DP'), but cannot have his/her needs included in the assistance unit.

**VERIFICATION**

For those programs that require the child to be living with a specified caretaker relative, verification must be provided which proves that each minor child included in the filing and assistance units is actually:

1. Related to the specified caretaker relative, and to his/her sibling(s), either by birth (includes half or adoptive siblings) or marriage (step-siblings), and
2. Living with the specified caretaker relative.



The primary verification for relationship is a birth certificate/adoption papers, baptismal certificate, marriage license, divorce decree or death certificate. Other documents may be used if necessary. For example, a written statement, signed by both parents indicating the child's paternity is acceptable proof to include the father in the filing unit. The statement does not need to be notarized and is considered proof of paternity until proven otherwise (i.e., paternity test excludes the individual as the child's father).

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To verify the “living with” requirement, documents such as landlord/neighbor statements, rental agreements, or current school or court records that indicate the address and presence of the child may be used, if necessary.

The child is considered to be “living with” his specified caretaker relative and other required filing unit members if the child is physically residing with the specified caretaker relative even though:

1. The child is under the jurisdiction of the court (on probation);
2. Legal custody is held by an agency/person that does not have physical custody of the child;

**NOTE:** A child incarcerated in a correctional institution such as Pine Hills, or any other institution providing schooling, counseling, and other structured activities for a specified time period imposed by a court of law, is not living with a specified relative.

3. The child is hospitalized for medical treatment that may include in-patient psychiatric services;
4. The child is not living in the home but will do so within 30 days of the receipt of benefits; or
5. The child is temporarily absent for a period of time, not to exceed 90 consecutive days.

If evidence such as reports from neighbors, school officials, etc., indicate the possibility that the child is not living with the specified caretaker relative, a home visit should be scheduled or an investigation authorized.

**JOINT CUSTODY**

A “joint custody” agreement legally provides that both parents function as providers of maintenance, physical care, and guidance for the child(ren). Actual circumstances may or may not indicate this is occurring.



The actual circumstances must be thoroughly investigated regardless of what the custody agreement/parenting plan states, and the action designating the primary custodial parent documented in system case notes. The dependent child must be living with the primary custodial natural/adoptive parent or other specified caretaker relative at least 51% of the time to be included in that person’s household. Once the custodial parent designation is made, it remains in place until relinquished by the custodial parent either through court action, agreement with another specified caretaker relative or the other parent who has assumed the

child's care, or it is reported to or discovered by the agency and verified that the child no longer resides at least 51% of the time with the initially designated relative.

- **NOTE:** It may be necessary to get independent statements (i.e., from child's school, physician, neighbors, day care provider, etc.) to determine the actual circumstances regarding physical custody. The individuals/entities who provide the statements should be 'neutral' and need to state why/how they have knowledge of the actual custody situation.
- If the child's parents share physical custody **equally** (exactly 50/50 custody), the filing unit must include both of the child's parents, and all stepparents, siblings and stepsiblings. **Eligibility must be determined based on both families' income and resources**, and may not exist.
- EXCEPTION:** If the case is medically needy, both natural parents must be included (participation code "SR") but stepparents would be coded "DP". The child's siblings could either be included or excluded, depending on what is most beneficial to the child/family.

## ASSESSING COMMON LAW MARRIAGE

To determine marital status, the applicant/recipient is required to provide documentation of the relationship. A marriage license, divorce decree, separation agreement, or other documentation shall be provided.

In Montana, a man and a woman who have not gone through a formal marriage ceremony may enter into a legally binding common law marriage.

For a common law marriage to exist, three elements must be present:

1. Consent and agreement - the man and woman must have mutually agreed and consented to enter into a marriage relationship;

**NOTE:** A common law marriage is NOT created simply because a man and woman live together and act as if they were married. The parties must **INTEND** to enter into marriage.

2. Competency - both were legally competent to enter into a marriage; and

**NOTE:** Each of the parties must be old enough to marry and not married to anyone else to enter into a valid common law marriage.

## 3. Cohabitation and holding themselves out as married.

The parties must live together and hold themselves out to relatives, friends, neighbors, co-workers and other members of the public as being married. Merely living together or having children together is NOT indicative that a common law marriage exists. There must be evidence that the parties hold themselves out as a married couple. Evidence that they do hold themselves out as married may include:

- a. Using the same last name;
- b. Referring to each other as husband and wife when introducing each other or talking to other people;
- c. Listing each other as spouse on health or life insurance policies, loan or credit applications, tax returns, and other documents.

**NOTE:** Owning property such as a house or car jointly with another person is NOT evidence that they are holding themselves out as married unless the deed, title or other proof of ownership indicates they own the property as husband and wife.

**PROVING COMMON  
LAW MARRIAGE**

The most important element of the common law marriage, and the hardest to prove is that the parties intend at some specific point in time to enter into a marriage. If the Department through the county Office of Public Assistance alleges that an applicant or recipient has entered into a common law marriage, the Department/County has the burden of proving that the three necessary elements of a common law marriage are present, including intent.

Under Montana law (26-1-602(30) MCA), there is a presumption that a man and woman who behave as if they were married have entered into a lawful contract of marriage. However, this presumption can be overcome by evidence to the contrary.

Often there will be conflicting evidence as to whether the parties held themselves out as married. For example, the woman may continue to use her own name in some situations but use the alleged husband's name at other times, or the parties may list each other as the spouse on some documents but not others.

In these instances, a court or hearing officer may find that a common law marriage does NOT exist.

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REQUIREMENTS**

If the three elements are not present in the alleged relationship, do not establish common law marriage. Evaluate the household members as per the standard filing unit policy. Document action in system case notes.

**NOTE:** Even in cases where there is considerable evidence that the parties did hold themselves out as husband and wife at least part of the time, courts have held that NO common law marriage existed. If there is any questionable evidence, do not consider the parties to be common law married.

If the three elements are present, request a written statement from the parties attesting to these facts. Document action in system case notes.

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